

4.0 Attorney General's Statement

ATTORNEY GENERAL'S STATEMENT

I hereby certify, pursuant to Section 402(b) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, et seq.), that in my opinion the laws of the State of Ohio provide adequate authority to carry out the program set forth in the "Program Description" submitted by the Ohio Environmental Protection Agency. The specific authorities provided, which are contained in lawfully enacted or promulgated statutes or regulations in full force and effect on the date of this Statement, include the following:

1. Authority to Issue Permits.

a. Existing and new point sources.

State law provides authority to issue permits for the discharge of pollutants by existing and new point sources to the same extent as required under the permit program administered by the U.S. Environmental Protection Agency ("EPA") pursuant to Section 402 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. (hereinafter "the FWPCA" or "the Act"). [Federal Authority: FWPCA Sections 301(a), 402(a)(1), 402(b)(1)(A); 40 C.F.R. Section 124.10.]

State Statutory or Regulatory Authority:

Ohio Revised Code Section 6111.03(J) (hereinafter cited as O.R.C.)

O.R.C. Section 6111.03(P)

Regulation EP-31-02

Remarks of the Attorney General:

Pursuant to Section 6111.03(J), the Director of the Ohio Environmental Protection (hereinafter referred to as OEPA) may:

(J) Issue, revoke, modify, or deny permits for the discharge of sewage, industrial waste, or other wastes into the waters of the state, and for the installation or modification of disposal systems or any part thereof in compliance with all requirements of the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 816, 33 U.S.C.A. 1251 and mandatory regulations adopted thereunder. . . .

O.R.C. Section 6111.03(P) provides that Chapter 6111. authorizes participation in the NPDES permit program and that Chapter 6111. is to be administered consistent with the FWPCA. This section reaffirms the intention of the Ohio General Assembly that state law provide authority to issue permits to the same extent required by the U.S. Environmental Protection Agency (hereinafter referred to as the EPA) pursuant to Section 402 of the FWPCA.

In addition, O.R.C. Section 6111.04 specifies that:

No person shall cause pollution or place or cause to be placed any sewage, industrial waste, or other waste in a location where they cause pollution of any waters of the state, and any such action is hereby declared to be a public nuisance, except in such cases where the director of environmental protection has issued a valid and unexpired permit, or renewal thereof

No person who is discharging or causing the discharge of any sewage, industrial waste, or other wastes into the waters of the state shall continue or cause the continuance of such discharge, without first obtaining a permit therefore issued by the director.

O.R.C. Section 6111.01 defines "pollution", "sewage", "industrial waste", and "other wastes". "Other wastes" is defined in Section 6111.01(D) to include:

... any other "pollutants" or "toxic pollutants" as defined in the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 886, 33 U.S.C.A. 1362, that are not sewage or industrial waste.

In addition, the definition of "waters of the state" in O.R.C. Section 6111.01(H) includes all "navigable waters" as that term was interpreted by the EPA on page 4 of the General Instructions to Attorneys General preparing Appendix A Statements.

OEPA Regulation EP-31-02 requires that any person who discharges or allows a discharge of pollutants into the waters of the state must have an Ohio NPDES permit. Certain discharges are exempted by O.R.C. Section 6111.04, but only where a permit is not required by a regulation of the EPA. The sections quoted above authorize a permit program which, in my opinion, is at least as comprehensive as the permit system administered by the EPA pursuant to the FWPCA for new and existing point sources.

b. Disposal into wells.

State law provides authority to issue permits to control the disposal of pollutants into wells. [Federal Authority: FWPCA §402(b)(1)(D); 40 C.F.R. §124.80.]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.03(J)

O.R.C. Section 6111.04

Remarks of the Attorney General:

The Director of the OEPA is given the power to issue a permit for disposal of pollutants into wells by O.R.C. Section 6111.03(J) which provides that the Director may:

(J) Issue, revoke, modify, or deny permits for the discharge of sewage, industrial waste, or other wastes into the waters of the state,

and for the installation or modification of disposal systems or any part thereof in compliance with all requirements of the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 816, 33 U.S.C.A. 1251 and mandatory regulations adopted thereunder . . .

"Waters of the state", as used in this section, is defined in O.R.C. Section 6111.01(H) to include wells. The intent of the Ohio legislature that pollutants disposed into wells be included in the permit program as required by the FWPCA is shown by O.R.C. Section 6111.04(B) which eliminates the requirements of a permit for:

(B) Water, gas, or other material injected into a well to facilitate the production of oil or gas or for disposal purposes, or water derived in association with oil or gas production and disposed of in a well, in compliance with the permits issued under Chapter 1509. of the Revised Code. This division does not authorize without a permit, any discharge that is prohibited by, or for which a permit is required by, regulation of the United States Environmental Protection Agency. . . . (emphasis added.)

The EPA requires that any state or interstate agency participating in the NPDES program have procedures to control the disposal of pollutants into wells. See 40 C.F.R. §124.80. These EPA regulations prevent the exemption from Ohio permit requirements of disposal of pollutants into wells.

O.R.C. Section 6111.04 requires a permit for both existing and new sources of well disposal. The pertinent sections state:

No person shall cause pollution or place or cause to be placed any sewage, industrial waste, or other wastes in a location where they cause pollution of any waters of the state ... except in such cases where the director of environmental protection has issued a valid and unexpired permit ...

.....
No person who is discharging or causing the discharge of any sewage, industrial waste, or other wastes into the waters of the state shall continue or cause the continuance of such discharge without first obtaining a permit

"Waters of the state", as used in this section, is defined in O.R.C. Section 6111.01(H) to include wells.

40 C.F.R. §124.80(c) requires that any permit issued for the disposal of pollutants into wells shall be issued in accordance with procedures and requirements for NPDES permits. Among the requirements for the issuance of a permit for the disposal of pollutants into wells is that of notice and public participation in the permit program. Both O.R.C. Section 6111.03(J) and O.R.C. Section 6111.04(B) require the State of Ohio to issue permits designed to comply with the regulations promulgated by the EPA pursuant to the FWPCA. Therefore, the State of Ohio must conform to the public participation procedures set forth in subpart (D) of 40 C.F.R. Part 124. The procedures which assure public participation in applications for a permit for disposal into wells are detailed under the Attorney General's remarks in authorities 8 and 9 of this certification.

2. Authority to Apply Federal Standards and Requirements

a. Effluent standards and limitations and water quality standards.

State law provides authority to apply in terms and conditions of issued permits applicable Federal effluent standards and limitations and water quality standards promulgated or effective under the FWPCA, including:

- (1) Effluent limitations pursuant to Section 301;
- (2) Water quality related effluent limitations pursuant to Section 302;
- (3) National standards of performance pursuant to Section 306;
- (4) Toxic and pretreatment effluent standards pursuant to Section 307; and
- (5) Ocean discharge criteria pursuant to Section 403 [Federal Authority: FWPCA §§ 301(b), 301(e), 302, 303, 304(d), 304(f), 306, 307, 402(b)(1)(A), 403, 208(e), and 510; 40 C.F.R. §124.42.]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.03(J)
O.R.C. Section 6111.042

Regulation EP-31-04(B)
Regulation EP-31-01(D)

Remarks of the Attorney General:

1. Effluent limitations pursuant to Section 301.

The OEPA has the authority to apply effluent standards which specify the amount of constituents permitted in individual wastewater discharges pursuant to O.R.C. Section 6111.03(J). That section states, inter alia:

The director shall specify in permits for the discharge of sewage, industrial waste, and other waste, the net volume net weight, duration, frequency and, where necessary, concentration of such sewage, industrial waste, and other wastes which may be discharged into the waters of the State.

"Net" is the substantial equivalent to "total", as used in 40 C.F.R. Part 124.

O.R.C. Section 6111.03(P) authorizes the Ohio program to be administered consistent with the Federal administration of the FWPCA and this interpretation is consistent with the Federal interpretation.

The Director may apply Federal effluent standards and limitations without further administrative rule-making at the State level. In accordance with O.R.C. Section 6111.03(J), the Director of the OEPA may grant a permit which is:

. . . in compliance with all requirements of the "Federal Water Pollution Control Act Amendments of 1972," . . . and mandatory regulations adopted thereunder, and set terms and conditions of permits, including schedules of compliance, where necessary. The terms and conditions shall be designed to achieve and maintain full compliance with the national effluent limitations, national standards of performance for new sources, and national toxic and pretreatment effluent standards set under such act, and any other mandatory requirements of such act that are imposed by regulation of the administrator of the United States Environmental Protection Agency

The national effluent limitations to which O.R.C. Section 6111.03(J) refers include those set by the Administrator pursuant to Section 301 and 304 of the FWPCA. The requirement that Ohio permits achieve full compliance with national effluent limitations assures that the OEPA may, as a condition for the issuance of permits, require that there shall be achieved effluent limitations for point sources:

- (i) by July 1, 1977, which shall require the application of the best practicable control technology currently available and in the case of the discharge into a publicly owned treatment works, which shall require compliance with pretreatment requirements;
- (ii) by July 1, 1983, which shall require the application of the best available technology economically achievable.

Publicly owned treatment works must comply:

- (i) by July 1, 1977, with effluent limitations based upon secondary treatment;
- (ii) by July 1, 1983, with effluent limitations based upon the study of alternative waste management techniques and the application of the best practicable waste treatment technology and information on alternative waste management techniques and systems published pursuant to Section 304(d)(2) of the FWPCA.

The Director, pursuant to O.R.C. Section 6111.042, may adopt and enforce regulations:

... setting forth and requiring compliance with national effluent limitations, national standards of performance for new sources, and national toxic and pretreatment effluent standards, as necessary in order to insure compliance with the "Federal Water Pollution Control Act Amendments of 1972," No person shall violate any such regulation, except in compliance with the terms and conditions of a permit issued under section 6111.03 of the Revised Code.

OEPA Regulation EP-31-04(B) permits the Director to determine levels of pollutants that may be discharged without violating applicable water quality standards or applicable effluent limitations.

2. Water quality related effluent limitations pursuant to Section 302

Pursuant to O.R.C. Section 6111.03(J), the Director may without further administrative rule-making at the State level, impose:

... as conditions of each permit, water quality related effluent limitations in accordance with sections 301 and 302 of the "Federal Water Pollution Control Act Amendments of 1972,"

Section 301 of the FWPCA mandates compliance with any more stringent effluent limitations required by Federal law or regulation or by State law or regulation. The authority granted to meet the Section 301 limitations also enables the OEPA to comply with Section 304(b) and Section 307 of the FWPCA, since a provision that the discharger comply with Section 304(b) and Section 307 is included in Section 301 of the FWPCA.

State water quality standards , adopted pursuant to O.R.C .

Section 6111.041, must be adopted in accordance with Section 303 of the FWPCA .

Therefore, O.R.C. Section 6111.03(J) , which requires water quality related effluent limitations that achieve water quality standards , would impose those requirements necessary to implement the total maximum daily loads established pursuant to Section 303 of the FWPCA . Regulation EP-31-04(B) requires that the water quality standards adopted by the OEPA are not to be violated by the levels of pollutants that may be discharged in accordance with the determination of the Director .

3. National standards of performance pursuant to Section 306

As defined by Section 306(a) (1) of the FWPCA:

(1) The term 'standard of performance' means a standard for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the Administrator determines to be achievable through application of the best available demonstrated control technology , processes , operating methods , or other alternatives , including , where practicable , a standard permitting no discharge of pollutants .

Pursuant to Section 306(b) (1) (B) of the FWPCA the Administrator is to propose and publish regulations establishing Federal standards of performance for new sources within the categories designated. Section 306(e) then requires that no owner or operator of a new source may operate that source in violation of any standard of performance which may be applicable to that source .

The Ohio legislature has ensured that the Federal scheme be followed by requiring that permits contain terms and conditions designed:

... to achieve and maintain full compliance with the national effluent limitations, national standards of performance for new sources ... and any other mandatory requirements of such act that are imposed by regulation of the administrator of the United States Environmental Protection Agency. O.R.C. Section 6111.03(J). (emphasis added).

Compliance with national standards of performance for new sources may be had without any further administrative rule-making at the State level.

The applicable effluent limitations to be required by Regulation EP-31-04(B) include, by the definition in Regulation EP-31-01(D), standards of performance.

4. Toxic and pretreatment effluent standards pursuant to Section 307.

Section 307(a) of the FWPCA requires that the Administrator of the U.S. Environmental Protection Agency establish a list of toxic substances and promulgate regulations to establish effluent standards or prohibitions regarding these toxic substances. Section 307(b) of the FWPCA specifies that the Administrator is to promulgate regulations establishing pretreatment standards for pollutants which will enter the publicly owned treatment works and which are not susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works.

The standards and effluent limitations so promulgated would be incorporated as permit terms and conditions pursuant to O.R.C. Section 6111.03(J), quoted in subsection 3 of this authority. In addition, such toxic effluent standards are applied in Ohio NPDES permits by Regulation EP-31-04(B).

5. Ocean discharge criteria pursuant to Section 403.

This federal requirement does not apply to Ohio waters.

b. Effluent limitations requirements of Sections 301 and 307.

In the absence of formally promulgated effluent standards and limitations under Sections 301(b) and 307 of the FWPCA, State law provides authority to apply in terms and conditions of issued permits effluent limitations to achieve the purposes of these sections of the FWPCA. Such limitations may be based upon an assessment of technology and processes as required under the FWPCA with respect to individual point sources, and include authority to apply:

- (1) To existing point sources, other than publicly-owned treatment works, effluent limitations based on application of the best practicable control technology currently available or the best available technology economically achievable;
- (2) To publicly owned treatment works, effluent limitations based upon the application of secondary treatment or the best practicable waste treatment technology; and

- (3) To any point source, as appropriate, effluent standards or prohibitions designed to prohibit the discharge of toxic pollutants in toxic amounts or to require pretreatment of pollutants which interfere with, pass through, or otherwise are incompatible with the operation of publicly owned treatment works. [Federal Authority: FWPCA §§ 301, 304(d), 307, 402(a)(1), 402(b)(1)(A); 40 C.F.R. §124.42(a)(6).]

State Statutory and Regulatory Authority

O.R.C. Section 6111.041

O.R.C. Section 6111.03(J)

Regulation EP-31-04(B)(1)(b)

Remarks of the Attorney General:

The State is required to possess the power to fully effectuate the purposes of the FWPCA in instances where applicable effluent standards or limitations have not been promulgated by the U.S. EPA. Pursuant to O.R.C. Section 6111.041 the Director of the OEPA can adopt standards of water quality to protect the waters of the State of Ohio. To achieve and maintain the standards of water quality, the Director shall impose, pursuant to O.R.C. Section 6111.03(J):

... where necessary and appropriate, as conditions of each permit, water quality related effluent limitations in accordance with sections 301 and 302 of the "Federal Water Pollution Control Act Amendments of 1972," . . .

The State of Ohio does, therefore, possess the statutory authority to apply effluent limitations which are in accordance with Section 301 of the FWPCA, even where the U.S. EPA has not promulgated national effluent limitations.

The State of Ohio may also apply effluent standards and limitations pursuant to Sections 302, 306 and 307 of the FWPCA since the Director may issue permits which are, pursuant to O.R.C. Section 6111.03(J):

... in compliance with all requirements of the "Federal Water Pollution Control Act Amendments of 1972," ... and mandatory regulations adopted thereunder

The EPA has adopted regulation 40 C.F.R. §124.42(a)(6) which requires the State to insure compliance:

Prior to promulgation by the Administrator of applicable effluent standards and limitations pursuant to Sections 301, 302, 306 and 307, such conditions as the Director determines are necessary to carry out the provisions of the Act.

This mandatory requirement, which would allow the Director to issue permits which meet the requirements of Sections 302, 306, and 307 of the FWPCA prior to promulgation of federal regulations, has been formalized into OEPA Regulation EP-31-04(B)(1)(b).

c. Schedules of compliance.

State law provides authority to set and revise schedules of compliance in issued permits which require the achievement of applicable effluent standards and limitations or, in the absence of a schedule of compliance contained therein, within the shortest reasonable time consistent with the requirements of the FWPCA. This includes authority to set interim compliance dates in permits which are enforceable without otherwise showing a violation of an effluent limitation or harm to water quality. [Federal Authority: FWPCA §§ 301(b), 303(e), 304(b), 306, 307, 402(b)(1)(A), 502(11), and 502(17); 40 C.F.R. §§ 124.44 and 124.72.]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.03(J)

O.R.C. Section 6111.01(K)

Regulation EP-31-04(A)(3)

Remarks of the Attorney General:

The State possesses the authority to require compliance with applicable FWPCA deadlines since the State is authorized to set effluent limitations and standards which will comply with the deadlines set in the FWPCA.

O.R.C. Section 6111.03(J) allows the Director of the OEPA to set terms and conditions of permits, "including schedules of compliance, where necessary." "Schedule of compliance" is defined in O.R.C. Section 6111.01(K) to be a:

[S]chedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with standards and regulations adopted under sections 6111.041 and 6111.042 of the Revised Code or compliance with terms and conditions of permits set under division (J) of section 6111.03 of the Revised Code.

Regulation EP-31-04(A)(3) sets forth the authority of the Director to set a satisfactory schedule of compliance as a condition of the permit in those cases determined by the Director to necessitate such measures.

The State of Ohio possesses the authority to set and revise schedules of compliances in those instances where no federal schedule of compliance has been promulgated. O.R.C. Section 6111.03(J) provides that the Ohio program shall comply with the mandatory regulations set forth by the EPA. The EPA has promulgated in 40 C.F.R. §124.44(a)(2) a requirement that:

(2) In the absence of any legally applicable schedule of compliance, in the shortest, reasonable period of time, such period to be consistent with the guidelines and requirements of the Act.

This regulation which would allow the Ohio OEPA to set a schedule of compliance to meet the statutory requirements of the FWPCA.

3. Authority to Deny Permits in Certain Cases.

State law provides authority to insure that no permit will be issued in any case where:

- a. The permit would authorize the discharge of a radiological, chemical, or biological warfare agent or high-level radioactive waste;
- b. The permit would, in the judgment of the Secretary of the Army acting through the Chief of Engineers, result in the substantial impairment of anchorage and navigation of any waters of the United States;
- c. The permit is objected to in writing by the Administrator of EPA, or his designee, pursuant to any right to object provided to the Administrator under Section 402(d) of the FWPCA; or
- d. The permit would authorize a discharge from a point source which is in conflict with a plan approved under Section 308(b) of the FWPCA. [Federal Authority: FWPCA §§ 301(f), 402(b)(6), 402(d)(2), and 208(e); 40 C.F.R. §§124.41 and 124.46.]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.03(J)

Regulation EP-31-04(A)(2)

Remarks of the Attorney General:

O.R.C. Section 6111.03(J) authorizes the Director of the OEPA to deny an application for a permit or renewal of a permit if:

- (1) The secretary of the army determines in writing that anchorage or navigation would be substantially impaired thereby;
- (2) The director determines that the proposed discharge or source would conflict with an area wide waste treatment management plan adopted in accordance with Section 208 of the "Federal Water Pollution Control Act Amendments of 1972,"
- (3) The administrator of the United States environmental protection agency objects in writing to the issuance or renewal of a permit in accordance with Section 402(d) of the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 880, 33 U.S.C.A. 1342(d); or
- (4) The application is for the discharge of any radiological, chemical, or biological warfare agent, or high-level radioactive waste into the waters of the United States.

The requirement that permits be denied in this situation is reflected in Regulation EP-31-04(A)(2) of the OEPA regulations.

4. Authority to Limit Duration of Permits.

State law provides authority to limit the duration of permits to a fixed term not exceeding five years.

[Federal Authority: FWPCA §402(b)(1)(B); 40 C.F.R. §124.51.]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.03(J)

Regulation EP-31-09

Remarks of the Attorney General:

O.R.C. Section 6111.03(J) states that "[a] permit may be issued for a period not to exceed five years" This requirement is echoed in Regulation EP-31-09. A permit may be renewed upon application and upon a finding by the Director that "the permit holder is making satisfactory progress towards the achievement of all applicable standards and has complied with the terms and conditions of the existing permit."

5. Authority to Apply Recording, Reporting, Monitoring, Entry, Inspection and Sampling Requirements.

State law provides authority to:

- a. Require any permit holder or industrial user of a publicly owned treatment works to:
 - (1) Establish and maintain specified records;
 - (2) Make reports;
 - (3) Install, calibrate, use and maintain monitoring equipment or methods (including where appropriate, biological monitoring methods);
 - (4) Take samples of effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as may be prescribed); and
 - (5) Provide such other information as may reasonably be provided.
- b. Enable an authorized representative of the State, upon presentation of such credentials as are necessary, to:
 - (1) Have a right of entry to, upon, or through any premises of a permittee or of an industrial user of a publicly-owned treatment works in which premises an effluent source is located or in which any records are required to be maintained;
 - (2) At reasonable times have access to and copy any records required to be maintained;
 - (3) Inspect any monitoring equipment or method which is required; and
 - (4) Have access to and sample any discharge of pollutants to State waters or to publicly owned treatment works resulting from the activities or operation of the permittee or industrial user.

[Federal Authority: FWPCA §§ 304(h)(2)(A) and (B),

308(a), 402(b)(2), and 402(b)(9); 40 C.F.R.
§§ 124.45(c), 124.61-63, and 124.73(d).]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.03(G)
O.R.C. Section 6111.03(J)
O.R.C. Section 6111.03(O)
O.R.C. Section 6111.05

Regulation EP-31-05

Remarks of the Attorney General:

Chapter 6111. of the Ohio Revised Code provides adequate authority to assure that recording, reporting, monitoring, entry, inspection, and sampling provisions, as required by the FWPCA, be applied by the State to holders of NPDES permits.

O.R.C. Section 6111.03 permits the Director of the Ohio EPA
to:

(G) Adopt, modify, and repeal regulations in accordance with Chapter 119. of the Revised Code governing the procedure for hearings, filing of reports, the issuance of permits, the issuance of industrial water pollution control certificates and all other, matters relating to procedure; (emphasis added.)

. . . .
(J) . . . The director shall specify in such permits that the permit is conditioned upon the right of his authorized representatives to enter upon the premises of a person to whom a permit has been issued for the purpose of determining compliance with sections 6111.01 to 6111.08 of the Revised Code, rules adopted thereunder, or the terms and conditions of a permit, order, or other determination The director may

condition permits upon the installation of discharge or water quality monitoring equipment or devices and the filing of such periodic reports on the amounts and contents of discharges and the quality of receiving waters as the director prescribes.

.
(O) Issue, modify, and revoke orders requiring any "industrial user" of any "publicly owned treatment works" as defined in sections 212(2) and 502(18) of the "Federal Water Pollution Control Act Amendments of 1972," . . . to establish and maintain records, make reports, install, use, and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample discharges in accordance with such methods, at such locations, at such intervals, and in such manner as the director determines, and provide such other information as is necessary to ascertain whether or not there is compliance with toxic and pretreatment effluent standards.

O.R.C. Section 6111.05 further provides, inter alia, that:

The director or his duly authorized representative may enter at reasonable times upon any private or public property to inspect and investigate conditions relating to pollution of any waters of the state, inspect any monitoring equipment, and sample any discharges

Any authorized representative of the director may at reasonable times examine any records or memorandums pertaining to the operation of disposal systems or discharges by "industrial users" into "publicly owned treatment works" as defined in the "Federal Water Pollution Control Act Amendments of 1972," The director may require the maintenance of records relating to the operation of such disposal systems or discharges. The director may make copies of such records.

O.R.C. Section 6111.03(G) authorizes the Director of the Ohio

EPA to promulgate regulations which provide for the establishment and maintenance of records, reporting, and providing such other information as may be required. The Director of the Ohio EPA may order industrial users of publicly owned treatment works to provide the information required by authority 5. (a) of the General Instructions pursuant to O.R.C. Section 6111.03(O). Industrial users of publicly owned treatment works are subject to the maintenance of records and allowing the copying of such records upon the action of the Director pursuant to O.R.C. Section 6111.05. The same section provides authorization required by authority 5. (1), (3) and (4) of permit holders or industrial users of publicly owned treatment works upon action of the Director or his authorized representatives. Pursuant to O.R.C. Section 6111.03(J), permits may be specifically conditioned upon (1) the establishment and maintenance of records, (2) the installation and use of monitoring equipment, and (3) the right of entry into the premises of a permittee or an industrial user of publicly owned treatment works.

Regulation EP-31-05 requires monthly and annual reports by permit holders and reports of new introductions of pollutants by publicly owned treatment works. The Director may require monitoring and annual submission of reports of monitoring results. The Director or his authorized representative may, pursuant to Regulation EP-31-05, enter the permittee's premises to copy required records, inspect monitoring equipment, or sample the discharge.

6. Authority to Require Notice of Introductions of Pollutants into Publicly Owned Treatment Works.

State law provides authority to require in permits issued to publicly owned treatment works conditions requiring the permittee to give notice to the State permitting agency of:

- a. New introductions into such works of pollutants from any source which would be a new source as defined in Section 306 of the FWPCA if such source were discharging pollutants directly to State waters;
- b. New introductions of pollutants into such works from a source which would be a point source subject to Section 301 if it were discharging such pollutants directly to State waters; or
- c. A substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit.
[Federal Authority: FWPCA §402(b)(8); 40 C.F.R. 124.45(d).]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.03(J)

Regulation EP-31-05(A)(10)

Remarks of the Attorney General.

O.R.C. Section 6111.03(J) provides adequate authority for the State of Ohio to comply with the requirements of Section 402(b)(8) of the FWPCA in that:

The director shall condition each permit for a government-owned disposal system, or any other "publicly owned treatment works" as defined in the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 844, 33 U.S.C.A. 1292, upon the reporting

of new introductions of industrial waste or other wastes and substantial changes in volume or character thereof being introduced into such systems or works from "industrial users" as defined in section 502 of such act, as necessary to comply with section 402(b)(8) of such act.

This requirement is reflected in Regulation EP-31-05(A)(10). The notice of new introduction of pollutants is to include information on the quality and quantity of such pollutants.

A municipal permittee will have adequate authority to carry out the reporting duties imposed by Section 402(b)(8) of the FWPCA with the aid of the State pursuant to the authority given to the OEPA in O.R.C. Section 6111.03(O) and O.R.C. Section 6111.05, as set forth under authority 5 above.

7. Authority to Insure Compliance by Industrial Users with Sections 204(b), 307, and 308.

State law provides authority to insure that any industrial user of a publicly owned treatment works will comply with FWPCA requirements concerning:

- a. User charges and recovery of construction costs pursuant to Section 204(b);
- b. Toxic pollutant effluent standards and pretreatment standards pursuant to Section 307; and
- c. Inspection, monitoring and entry pursuant to Section 308.
[Federal Authority: FWPCA §402(b)(9); 40 C.F.R. §124.45(e).]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.03(L)

O.R.C. Section 6111.03(J)

O.R.C. Section 6111.07

O.R.C. Section 6111.09

O.R.C. Section 6111.99

O.R.C. Section 6111.03(O)

Remarks of the Attorney General:

The Director of the Ohio EPA is given the specific power to enforce Sections 204(b), 307, and 308 of the FWPCA by O.R.C. Section 6111.03(L).

This section allows the Director of the Ohio EPA to:

(L) Institute or cause to be instituted in any court of competent jurisdiction, proceedings to compel compliance with sections 6111.01 to 6111.08 of the Revised Code, with the orders of the director issued under such sections, or to insure compliance with Sections 204(b), 307 and 308 of the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 835, 33 U.S.C.A. 1284(b), 1317 and 1318;

Industrial users of publicly owned treatment works must also comply with these sections of the FWPCA, since O.R.C. Section 6111.03(J) is included as a section for which the Director may compel compliance. O.R.C. Section 6111.03(J) enables the Ohio EPA to comply with the FWPCA and mandatory regulations promulgated thereunder, and compliance by industrial users with Section 204(b), Section 307, and Section 308 is included in 40 C.F.R. §124.45(e).

Authority for the State to monitor discharges by industrial users into publicly owned treatment works is set forth in O.R.C. Section 6111.03(O) and notice of the introduction of pollutants into publicly owned treatment works is required by O.R.C. Section 6111.03(J).

A person who violates or fails to perform a duty imposed by O.R.C. Section 6111.03(J) or O.R.C. Section 6111.03(L) is subject to civil penalties pursuant to O.R.C. Section 6111.09 and criminal penalties pursuant to O.R.C. Section 6111.99. These sections in relevant parts, together with the prohibitive section, state:

Section 6111.07:

(A) No person shall violate or fail to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code, or violate any order, regulation, or term or condition of a permit issued by the director of environmental protection pursuant to such sections

Section 6111.09:

The attorney general, upon written request by the director of environmental protection, shall commence an action under this section against any person who violates section 6111.04, 6111.042, 6111.05, or division (A) of section 6111.07 of the Revised Code. Any action under this section is a civil action

Section 6111.99:

(A) Whoever violates section 6111.04, 6111.042, 6111.05, or division (A) of section 6111.07 of the Revised Code shall be fined not more than twenty-five thousand dollars or imprisoned not more than one year, or both.

8. Authority to Issue Notices, Transmit Data, and Provide Opportunity for Public Hearings.

State law provides authority to comply with requirements of the FWPCA and EPA Guidelines for "State Program Elements Necessary for Participation in the National Pollutant Discharge Elimination System", 40 C.F.R. Part 124 (hereinafter "the Guidelines") to:

- a. Notify the public, affected States and appropriate governmental agencies of proposed actions concerning the issuance of permits;
- b. Transmit such documents and data to and from the U.S. Environmental Protection Agency and to other appropriate governmental agencies as may be necessary; and
- c. Provide an opportunity for public hearing, with adequate notice thereof, prior to ruling on applications for permits.

[Federal Authority: Generally: FWPCA §§ 101(e) and 304(h)(2)(B).]

Function 8(a): FWPCA §§ 402(b)(3) (public notice), 402(b)(5) (notice to affected States), 402(b)(6) (notice to Army Corps of Engineers); 40 C.F.R. §§ 124.31 (tentative permit determinations), 124.32 (public notice), 124.33 (fact sheets) and 124.34 (notice to government agencies).

Function 8(b): FWPCA §§ 402(b)(4) (notices and permit applications to EPA), 402(b)(6) (notices and fact sheets to Army Corps of Engineers); 40 C.F.R. §§ 124.22 (receipt and use of Federal data), 124.23 (transmission of data to EPA), 124.34 (notice to other government agencies), 124.46 (transmission of proposed permits to EPA), 124.47 (transmission of issued permits to EPA).

Function 8(c): FWPCA §402(b)(3) (opportunity for public hearing); 40 C.F.R. §§ 124.36 (public hearings), 124.37 (notice of public hearings.)

State Statutory and Regulatory Authority

O.R.C. Section 6111.03(P)

Regulation EP-40-05(A)

Regulation EP-40-07

Regulation EP-40-08

Regulation EP-40-06

Regulation EP-40-10(B)

Regulation EP-40-09

Regulation EP-40-12(A), (B)

Regulation EP-40-08(B)

Regulation EP-40-07

Remarks of the Attorney General:

The State of Ohio has the authority to promulgate regulations which comply with the requirements of the FWPCA and EPA Guidelines for public participation in the NPDES permit program. O.R.C. Section 6111.03(P), authorizes the Director of the Ohio EPA to exercise all incidental power necessary to carry out the purposes of these sections by providing:

Sections 6111.01 to 6111.09 and 6111.99 of the Revised Code authorize the state to participate in the National Pollutant Discharge Elimination System in accordance with the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 816, 33 U.S.C.A. 1251. Such sections shall be administered, consistent with the laws of this state and federal law, in the same manner that the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 816, 33 U.S.C.A. 1251, are required to be administered.

That authority has been utilized to promulgate Chapter EP-40 of the Ohio EPA Regulations for the purpose of complying with public participation requirements.

The proposed action of the Director and a draft NPDES permit, as required prior to public notice of proposed issuance or denial by 40 C.F.R. §124.31, are provided in OEPA regulation EP-40-05(A) which states:

(A) . . . in all actions of the Agency, the Director shall prepare and give notice to the parties of a proposed action without an adjudication hearing. The proposed action shall be in the same form as, and include all elements of, a final action and where issuance of permits is proposed, shall include a proposed permit (emphasis added.)

The proposed permit would, of necessity, incorporate as conditions of the permit proposed effluent limitations, proposed schedules of compliance, and proposed special conditions pursuant to the authority granted in O.R.C. Section 6111.03(J). (See authority 2 above.)

The public notice required of every complete application for an NPDES permit, as set forth in 40 C.F.R. §124.32, is provided in Regulations EP-40-07(A) and EP-40-08(A). These regulations assure that notice is circulated in the geographical area of the discharge and among those people who have requested notice or who are on a mailing list to receive copies of notices. The public notice allows a period of 30 days for the submission of written views by interested persons on the proposed action and provides pertinent information concerning the Agency and the proposed action.

In accord with all the requirements of 40 C.F.R. §124.33, Regulation EP-40-06(A) requires that the Agency prepare a fact sheet for those discharges which have a total volume of more than 500,000 gallons on any day. The fact sheets include:

- (1) a sketch or detailed description of the location of the discharge described in the application;
- (2) a quantitative description of the discharge described in the application;
- (3) the proposed action of the director including the terms, specifications, conditions, and limitations of a proposed permit;

- (4) a description of the uses for which the receiving waters have been classified, if any, and identification of applicable water quality and effluent standards;
- (5) the description of the procedures for the formulation of a final determination; and
- (6) instructions to persons desiring to be on the mailing list.

Regulation EP-40-06(B) requires the OEPA to maintain a mailing list of persons who request fact sheets for specified applications and the fact sheet is mailed on or before the date of publication to those on the mailing list in accordance with Regulation EP-40-07(A) (3).

The notice to other government agencies, required by 40 C.F.R. §124.34, is provided by Regulation EP-40-07(A) (4), EP-40-09, and EP-40-10(B). Pursuant to Regulation EP-40-07(A) (4), notice of a proposed action is mailed to any state, interstate, federal or local governmental agency having jurisdiction over waters which may be affected by the Agency's action. Regulation EP-40-09(B) requires that such notice is also mailed to:

- (1) any agency responsible for an areawide waste treatment management plan pursuant to Section 208(b) of the FWPCA;
- (2) any agency responsible for preparation of a continuous planning process under Section 303(e) of the FWPCA; and

- (3) public health agencies.

Fact sheets for major discharges are also transmitted to the appropriate District Engineer of the Army Corps of Engineers in accordance with Regulation EP-40-10(B).

The public notice which must be sent to these various entities shall include, pursuant to Regulation EP-40-09(A):

- (1) the information required for public notice
and may include a copy of such public notice;
- (2) a statement that such state or agency may
submit written recommendations to the
Director and to the Regional Administrator.
Such recommendation will be incorporated
into the final action or a written explanation
will be given; and
- (3) a copy of the fact sheet and an offer to supply
a copy of the permit application, proposed
permit, and ancillary papers upon request.

In administering the NPDES program pursuant to authorization by the EPA, the OEPA will be bound by conditions of the agreement negotiated as a condition precedent to such authorization. Accordingly, data will be forwarded to comply with the authority required by 8(a) and 8(b). However, the OEPA has promulgated regulations which cover the functions of 8(a).

Regulation EP-40-10(A)(1) provides for the transmission to the Regional Administrator of proposed NPDES permits as required by 40 C.F.R. §124.46 and function 8.b. Regulation EP-40-10(A)(2) provides for the transmission to the Regional Administrator of a final issuance, modification, or renewal of a permit as required by 40 C.F.R. §124.47 and function 8.b.

The public hearings required by 40 C.F.R. §124.36 are provided for in Regulation EP-40-12. This regulation permits any person to request a public meeting within thirty days of notice of the Director's proposed action to issue or renew a permit. If the Director determines that there is a significant public interest in a proposed action he shall hold a public meeting. Public notice of a public meeting is given in EP-40-07(A) as required in 40 C.F.R. §124.37(a). The contents of the public notice pursuant to Regulation EP-40-08(B) provide the required information about the agency holding the hearing, the applicant whose application will be considered, and the specifics regarding the meeting and the purpose of the meeting. These Federal requirements are set forth in 40 C.F.R. §124.37(b).

9. Authority to Provide Public Access to Information.

State law provides authority to make information available to the public, consistent with the requirements of the FWPCA and the Guidelines, including the following:

- a. Except insofar as trade secrets would be disclosed, the following information is available to the public for inspection and copying:
 - (1) Any NPDES permit, permit application, or form;
 - (2) Any public comments, testimony or other documentation concerning a permit application; and

(3) Any information obtained pursuant to any monitoring, recording, reporting or sampling requirements or as a result of sampling or other investigatory activities of the State.

b. The State may hold confidential any information (except effluent data) shown by any person to be information which, if made public, would divulge methods or processes entitled to protection as trade secrets of such person. [Federal Authority: FWPCA §§ 304(h)(2)(B), 308(b), 402(b)(2) and 402(j); 40 C.F.R. §124.35.]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.05

Regulation EP-40-07

Regulation EP-40-08

Remarks of the Attorney General:

Authority exists to require that information be made available to the public, consistent with requirements of the FWPCA and 40 C.F.R. §124.35. O.R.C. Section 6111.05 provides for the protection of confidential information, excluding effluent data, which is shown by any person to be entitled to protection as trade secrets. O.R.C. Section 6111.05 states, inter alia:

. . . Any records, reports, or information obtained under Chapter 6111. of the Revised Code shall be available for public inspection, except that:

(A) Upon a showing satisfactory to the director of environmental protection by any person that such records, reports, or information, or any particular part thereof, other than data concerning the amounts or contents of discharges or the quality of the receiving waters, to which

the director has access under this chapter, if made public would divulge information entitled to protection as trade secrets of such person, the director shall consider such record, report, or information or particular portion thereof confidential. Prior to divulging any alleged trade secret information pursuant to this division, the director shall give ten days' written notice to the person claiming trade secrecy.

(B) Such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the state, another state, or of the United States, when necessary to sustain an action brought pursuant to Chapter 6111. of the Revised Code or during an adjudication hearing, or when otherwise necessary to fulfill any requirement of the "Federal Water Pollution Control Act Amendments of 1972," 85 Stat. 816, 33 U.S.C.A. 1251.

This section allows the publication of commercial or financial information which, although confidential, does not constitute a trade secret. This interpretation is consistent with the administration of the FWPCA.

The procedures for review by the Regional Administrator of information which may be entitled to protection as trade secrets in accordance with 40 C.F.R. 124.35(b) are provided in the Memorandum of Agreement between the OEPA and the EPA.

Pursuant to O.R.C. Section 6111.05, which makes any records, reports, or information obtained available for public inspection, Regulations EP-40-07 and EP-40-08 have been promulgated to provide the procedures to make such information available. Regulation EP-40-07(A) requires the Agency to give

public notice of all applications for issuance, modification, or renewal of permits, proposed actions, public meetings, and adjudication hearings. Regulation EP-40-08(A) (1) requires public notice of proposed actions for issuance or renewal of a permit, including:

(1) The name of the Agency and the addresss and telephone number of the facilities where Agency files and records pertaining to the application are located and may be inspected and copied, and instructions for persons desiring to obtain additional information or a copy of any fact sheet prepared or of the proposed permit; and instructions to persons desiring to be included on a mailing list provided for in EP-40-06(B).

O.R.C. Section 6111.03(J) requires that the Director issue permits which are in compliance with the requirements of the FWPCA and mandatory regulations adopted thereunder. 40 C.F.R. §124.35(a) requires a state agency to make available public comments; and the Director may also make available other information obtained by the agency pursuant to its participation in the NPDES permit program. The records, reports, or information required by O.R.C. Section 6111.05 to be made available for public inspection, include public comments concerning the permit application and, at the Director's discretion, other information which has been obtained by the Agency.

10. Authority to Terminate or Modify Permits.

State law provides authority to terminate or modify permits for cause including, but not limited to, the following:

- a. Violation of any condition of the permit (including, but not limited to, conditions concerning monitoring, entry, and inspection);
- b. Obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts; or
- c. Change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.
[Federal Authority: FWPCA §402(b)(1)(C); 40 C.F.R. §§ 124.45(b) and 124.72.]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.03(J)

Regulation EP-40-07(A)

Remarks of the Attorney General:

Statutory authority allows the Ohio EPA to terminate or modify permits for cause, pursuant to O.R.C. Section 6111.03(J), which states, inter alia:

... A permit may be modified, suspended, or revoked for cause including, but not limited to: violation of any condition of the permit; obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts; or changes in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

Effluent standards, water quality standards and compliance dates are a condition of the Ohio NPDES permit, as set forth in authority 2, supra. The statutory authority for permit requirements of entry, inspection, and sampling is listed in authority 5, supra. Since each of these factors is a condition of a

permit, O.R.C. Section 6111.03(J), as quoted above, allows the modification or termination of the permit where any of these permit conditions are violated. The opportunity for a public hearing on the modification, suspension, or revocation of a permit, as required by 40 C.F.R. §124.72(a), is satisfied by Regulation EP-40-07(A).

II. Authority to Abate Violations of Permits or the Permit Program.

State law provides authority to:

a. Abate violations of:

- (1) Requirements to obtain permits;
- (2) Terms and conditions of issued permits;
- (3) Effluent standards and limitations and water quality standards (including toxic effluent standards and pretreatment standards applicable to dischargers into publicly owned treatment works); and
- (4) Requirements for recording, reporting, monitoring, entry, inspection, and sampling.

b. Apply sanctions to enforce violations described in paragraph (a) above, including the following:

- (1) Injunctive relief, without the necessity of a prior revocation of the permit;
- (2) Civil penalties;
- (3) Criminal fines for willful and negligent violations; and
- (4) Criminal fines against persons who knowingly make any false statement, representation or certification in any form, notice, report, or other document required by the terms or conditions of any permit or otherwise required by the State as part of a recording, reporting, or monitoring requirement;

- c. Apply maximum civil and criminal penalties and fines which are comparable to the maximum amounts recoverable under Section 309 of the FWPCA or which represent an actual and substantial economic deterrent to the actions for which they are assessed or levied. Each day of continuing violation is a separate offense for which civil and criminal penalties and fines may be obtained.
[Federal Authority: FWPCA §§ 402(b)(7), 309, 304(a)(2)(C), 402(h), 504; 40 C.F.R. §124.73.]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.07
O.R.C. Section 6111.09
O.R.C. Section 6111.99

Remarks of the Attorney General:

O.R.C. Section 6111.07(A) provides that:

No person shall violate or fail to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code, or violate any order, regulation, or term or condition of a permit issued by the director of environmental protection pursuant to such sections.

Sections 6111.01 to 6111.08 of the Revised Code authorize the Director, as required by Section 402(b) of the FWPCA, to require discharge permits, to set effluent limitations and water quality standards, and to apply requirements for recording, reporting, and sampling. Violation of any of these requirements will subject the violator to prosecution. O.R.C. Section 6111.07(A) specifically makes the violation of a term or condition of the permit subject to sanction.

Injunctive relief, civil penalties, and criminal fines are available as sanctions to enforce the violations described in Section 6111.07. O.R.C.

Section 6111.07(B) directs the Attorney General, upon written request of the Director of the Environmental Protection Agency, to:

. . . bring an action for an injunction against any person violating or threatening to violate such sections, or violating or threatening to violate any order, regulation, or condition of a permit issued by the director pursuant to such sections. In an action for injunction to enforce any final order of the director brought pursuant to this section, the finding by the director, after hearing, is prima-facie evidence of the facts found therein.

The power to seek an injunction applies to Sections 6111.01 to 6111.08 of the Revised Code. The permit need not be revoked before seeking injunctive relief.

Civil penalties are imposed by O.R.C. Section 6111.09, which states:

Any person who violates section 6111.04, 6111.042, 6111.05, or division (A) of section 6111.07 of the Revised Code shall pay a civil penalty of not more than ten thousand dollars The attorney general, upon written request by the director of environmental protection, shall commence an action under this section against any person who violates sections 6111.04, 6111.042, 6111.05, or division (A) of section 6111.07 of the Revised Code. Any action under this section is a civil action

Criminal sanctions are imposed on violators by O.R.C. Section 6111.99 which states:

(A) Whoever violates section 6111.04, 6111.042, 6111.05, or division (A) of section 6111.07 of the Revised Code shall be fined not more than twenty-five thousand dollars or imprisoned not more than one year, or both.

.....
(C) Whoever violates division (C) of section 6111.07 of the Revised Code shall be fined not more than twenty-five thousand dollars.

Any violation of these sections may result in the imposition of criminal fines against the violators, whether or not the violations were willful or negligent. The violations for which a fine can be imposed include: knowingly making a false statement, misrepresentation or failure to disclose information in any form, notice, report, or other document required by the terms or conditions of any permit or otherwise required by the State as part of a reporting, recording, or monitoring requirement. O.R.C. Section 6111.07(C) specifically states that:

No person shall knowingly submit false information or records or fail to submit information or records pertaining to discharges required as a condition of a permit.

The fine of twenty-five thousand dollars per day of violation which may be levied against the violator of these provisions is comparable to those fines set forth in Section 309(c) of the FWPCA. Each day of a violation constitutes a separate offense as provided in O.R.C. Section 6111.07(A).

There is no minimum criminal fine imposed by Chapter 6111. of the Revised Code, as is imposed in the FWPCA, but provision is made for imprisonment for periods up to one year by O.R.C. Section 6111.99(A) for most violations. (Section quoted above.)

12. State Board Membership

No State board or body which has or shares authority to approve permit applications or portions thereof, either in the first instance or on appeal, includes [or will include, at the time of approval of the State permit program], as a member, any person who receives, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit. No State law requires representation on the State board or body which has or shares authority to issue permits which would violate the conflict of interest provision contained in Section 304(h)(2) of the FWPCA.
[Federal Authority: FWPCA §304(h)(2)(D); 40 C.F.R. §124.94.]

State Statutory and Regulatory Authority:

O.R.C. Section 121.03(A)
O.R.C. Section 3745.02

Remarks of the Attorney General:

O.R.C. Section 121.03(A) provides for the appointment of the Director of the Ohio Environmental Protection Agency by the Governor, with the advice and consent of the Senate. The Director holds his office during the term of the appointing governor, but is subject to removal at the pleasure of the governor.

The composition of the Environmental Board of Review, an administrative appeal board, consists of:

. . . three members appointed by the governor with the advice and consent of the senate for terms of six years, except that the terms of the first members of the board shall be for two, four, and six years, respectively, as designated by the governor at the time of the appointment. Any vacancy in the office of a member of the board shall be filled by appointment by the governor for the unexpired term of the member whose office will be vacant. . . . Each member shall have extensive experience in pollution control and abatement technology, ecology, public health, environmental law, economics of natural resource development, or related fields. At least one member shall be an attorney. No more than two members shall be of the same political party. Each member shall serve full time. O.R.C. Section 3745.02.

The Director or the members of the Environmental Board of Review need not be represented by individuals who would violate Section 304(h)(2) of the FWPCA. Based on affidavits solicited from members of the Environmental Board of Review and the Director and correspondence with John R. Quarles, Jr., as attached, I find that the members of the Environmental Board of Review and the Director of the Ohio Environmental Protection Agency do not appear to have financial interests which are incompatible with 40 C.F.R. Section 124.94 promulgated pursuant to the FWPCA.

All necessary statutory and regulatory authority has been cited to support the OEPA "Program Description".

Certified on this 17th day of December, A.D., 1973
in the City of Columbus, State of Ohio.

William J. Brown

WILLIAM J. BROWN

Attorney General, State of Ohio

Attachments for Attorney General's Statement

Certification Correlation Sheet

S.B. 80 (Appendix 3.2)

ORC Chapter 1509 (Appendix 3.6)

ORC Section 121.03(A) (Appendix 3.1)

ORC Section 3745.02 (Appendix 3.1)

EP-31 Ohio NPDES Permit (Appendix 3.4)

EP-40 Rules of Procedure (Appendix 3.4)

Affidavits

ATTORNEY GENERAL'S
CERTIFICATION CORRELATION SHEET

FEDERAL REQUIREMENTS

OHIO STATUTE AND REGULATION

Authority 1.

- a. Issue permits to new and existing point sources

O. R. C. Section 6111.03(J) at p. 6
O. R. C. Section 6111.03(P) at p. 13
O. R. C. Section 6111.04 at p. 14-15
O. R. C. Section 6111.01 at p. 2-3
EP-31-02

- b. Issue permits to control disposal of pollutants into wells

O. R. C. Section 6111.03(J) at p. 6
O. R. C. Section 6111.01(H) at p. 3
O. R. C. Section 6111.04 at p. 16
O. R. C. Section 6111.04 at p. 14-15

Authority 2.

- a. Apply applicable Federal effluent standards and limitations and water quality standards

O. R. C. Section 6111.03(J) at p. 7
O. R. C. Section 6111.042 at p. 19
EP-31-04(B)
EP-31-01(D)

- (1) Effluent limitations pursuant to Section 301

O. R. C. Section 6111.03(J) at p. 7 and p. 8

- (2) Water quality related effluent limitations pursuant to Section 302

O. R. C. Section 6111.03(J) at p. 8

- (3) National standards of performance pursuant to Section 306

O. R. C. Section 6111.03(J) at p. 7

- (4) Toxic and pretreatment effluent standards pursuant to Section 307

O. R. C. Section 6111.03(J) at p. 7

(5) Ocean discharge criteria pursuant to Section 403

Not applicable

b. Effluent limitations requirements of Sections 301 and 307

O. R. C. Section 6111.041 at p. 17
O. R. C. Section 6111.03(J) at p. 8
O. R. C. Section 6111.03(J) at p. 7
EP-31-04(B)(1)(b)

c. Schedules of compliance

O. R. C. Section 6111.03(J) at p. 7
O. R. C. Section 6111.01(K) at p. 3
EP-31-04(A)(3)

Authority 3.

Authority to deny permits in certain cases

O. R. C. Section 6111.03(J) at p. 7-8
EP-31-04(A)(2)

Authority 4.

Authority to limit duration of permits

O. R. C. Section 6111.03(J) at p. 10
EP-31-09

Authority 5.

a. Require a permit holder or industrial user of a publicly owned treatment works to sample, monitor, and report

O. R. C. Section 6111.03(G) at p. 5
O. R. C. Section 6111.03(J) at p. 9-10
O. R. C. Section 6111.03(O) at p. 12
O. R. C. Section 6111.05 at p. 20
EP-31-05

b. Enable an authorized representative of the State to enter, have access to records, copy records, and inspect monitoring equipment or samples

O. R. C. Section 6111.03(J) at p. 9-10
O. R. C. Section 6111.05 at p. 19-20
EP-31-05

Authority 6.

Authority to require notice of introductions of pollutants into publicly owned treatment works

O. R. C. Section 6111.03(J) at p. 10
EP-31-05(A)(10)

Authority 7.

Authority to insure compliance
by industrial users with Sections
204(b), 307, and 308

✓ O.R.C. Section 6111.03(L) at p. 11
? O.R.C. Section 6111.03(J) at p. 7
O.R.C. Section 6111.07 at p. 21
O.R.C. Section 6111.09 at p. 22
*pen*³ O.R.C. Section 6111.99 at p. 23

Authority 8.

Authority to issue notices, trans-
mit data, and provide opportunity
for public hearings

O.R.C. Section 6111.03(P) at p. 13

Section 124.31. Tentative deter-
minations and draft permits.

- a. proposed actions
 - (1) proposal to issue or deny
 - (2) if proposal to issue:
 - (i) effluent limitations
 - (ii) compliance schedule
 - (iii) other conditions

EP-40-05(A)
EP-40-05(A)

O.R.C. Section 6111.03(J) at p. 7-8

Section 124.32. Public notice.

- a. public notice of complete
application
 - (1) circulation may include:
 - (i) N/A
 - (ii) publication in news-
papers
 - (2) mailed upon request
 - (3) mailing list

EP-40-07(A)(1)
EP-40-07(A)(3)
EP-40-07(A)(2); O.R.C. Section 3745.0

- b. 30 day public comment
period
comments retained by
director

EP-40-08(A)(6)(b)
EP-40-04(A)(4); EP-40-05(B)

- c. public notice must contain:
- | | |
|---|------------------|
| (1) name of agency | EP-40-08 (A) (1) |
| (2) name of applicant | " (2) |
| (3) description of discharge | " (3) |
| (4) location of discharge | " (4) |
| (5) determination to issue
or deny | " (5) |
| (6) statement of procedures | " (6) |
| (7) instructions as to
availability of information | " (1) |

Section 124.33. Fact Sheets

- a. to be sent on request, shall include:
- | | |
|--|------------------|
| (1) location of discharge | EP-40-07 (A) (3) |
| (2) description of discharge | EP-40-06 (A) (1) |
| (i) volume | " (2) |
| (ii) average temp. | " (2) (a) |
| (iii) discharge in pounds/
day | " (2) (b) |
| (3) requirements of
Section 124.31 as to tentat.
determination | " (2) (c) |
| (4) description of waters | EP-40-06 (A) (3) |
| (5) " " procedures | " (4) |
| (i) public comment | " (5) |
| (ii) request for public
hearing | " (5) (a) |
| (iii) other procedures | " (5) (b) |
| b. addition of name to the mailing | " (5) (c) |
| | " (B) |

Section 124.34. Notice to Other State Agencies Shall Include:

- | | |
|---|------------------|
| a. notice to other states and agencies;
opportunity to comment, etc. | EP-40-07 (A) (4) |
| b. notice to interstate agency | EP-40-09 (A) (2) |
| c. notice to A. C. O. E. | EP-40-09 (B) (1) |
| d. notice to other agencies with
procedure for: public comments
request public hearing; | EP-40-10 (B) |
| | EP-40-07 (A) (5) |
| | EP-40-12 (A) |

- specific request for fact sheet. EP-40-06 (B) (1)
- Agencies shall include:
- (1) those under Section 208 (b) EP-40-09 (B) (1)
 - FWPCA
 - (2) Section 303 (e) agencies " (B) (2)
 - e. public health agencies EP-40-09 (B) (3)

Section 124.35. Public access to information

- a. public health agencies EP-40-04 (A) (5)
- b. trade secrets
- c. disclosure of confidential information to the Regional Administration
- d. copying facilities EP-40-20 (B)

Section 124.36. Public Hearings EP-40-12

Section 124.37. Public notice of public hearings

- a. public notice of public hearings EP-40-07 (A)
 - (1) publication in a newspaper " (A) (1)
 - (2) to whom mailed " (A) (b) (5)
 - (3) mailed upon request " (A) (3)
 - (4) shall be effected 30 days in advance EP-40-07 (c)
- b. notice shall contain: EP-40-08 (B)
 - (1) name, address of agency " (B) (1)
 - (2) name, address of applicant " (B) (2)
 - (3) location of discharge " (B) (3)
 - (4) reference to public notice of application " (B) (4)
 - (5) time and place of hearing " (B) (5)
 - (6) purpose of the hearing " (B) (8)
 - (7) statement of issues " (B) (6)
 - (8) where information may be obtained " (B) (1)
 - (9) nature and procedure of " (B) (7)

Section 124.46. Proposed Permit Transmitted to Regional Administration EP-40-10-(A) (1)

- a. inclusion to all terms and conditions
- b. R. A. 's objection right
- c. procedures upon written objection by the R. A.
- d. written waiver

Section 124.47. Transmission of
issued permit

EP-40-10 (A) (2)

Authority 9.

Authority to provide public
access to information

O. R. C. Section 6111.05 at p. 20-21

Authority 10.

Authority to terminate or modify
permits

O. R. C. Section 6111.03 (J) at p. 11
EP-40-07 (A)

Authority 11.

Authority to abate violations
of permit or the permit program

O. R. C. Section 6111.07 (A) at p. 21
O. R. C. Section 6111.07 (B) at p. 22
O. R. C. Section 6111.09 at p. 22
O. R. C. Section 6111.99 at p. 23

Authority 12.

No violation of conflict of interest
provision by Director of Board
of Environmental Review

O. R. C. Section 121.03 (A)
O. R. C. Section 3745.02